

Claimant worked for respondent for approximately 2½ to 3 years. He was hired as a cook but had worked his way up to assistant food production manager by the time of his injury. On July 12, 1996 claimant was removing a container of gravy from a microwave oven when the container cracked, spilling the contents onto his left hand. Claimant reported this burn injury to his supervisor, Bob Carmichael, and was sent to Dr. Doug Frye.

Claimant continued working for respondent after his injury but with certain light duty restrictions. Claimant worked primarily one-handed and, because of the injury, could not do certain lifting or dishwashing. These duties were assumed by other employees but claimant otherwise continued with his regular job duties in the kitchen.

Claimant testified that he became increasingly stressed following his burn injury because of a lack of help and because of problems with his supervisory control over other workers in the kitchen.

At the suggestion of his attorney, claimant sought psychological counseling. He was referred to Dr. James R. Eyman, a psychologist, whom he first saw on July 23, 1996. Dr. Eyman diagnosed claimant as having an adjustment reaction disorder with depression and anxiety. He referred claimant to a psychiatrist, Dr. William Johns, who prescribed medications.

On September 5, 1996 claimant left work early. He told the bookkeeper he was leaving and asked one of the other cooks to cover for him. The manager, Mr. Carmichael, was not in at the time claimant left. Claimant was fired for leaving his work station without cause. Claimant contends he left because he could not cope with the work situation. He did not, however, give this explanation to his manager at the time of his termination. Mr. Carmichael testified that he was unaware claimant was seeing a psychologist or had been diagnosed with a depressive disorder.

After being terminated claimant applied for and received unemployment compensation benefits. He applied for other work, including restaurant and kitchen jobs. He has performed some work since his termination but nothing steady. At the time of his April 13, 1998 regular hearing claimant was unemployed. But by the time of his August 20, 1998 and October 16, 1998 regular hearing testimony claimant was working part-time for Prudential Auction Service. It did not appear that claimant was actively seeking other employment, however.

Dr. Eyman obtained a history that claimant had been burned at work. Afterwards claimant began feeling more and more stressed and overwhelmed with work. He was frustrated that new management was not providing enough help. Claimant was having trouble sleeping, was lethargic and lacked interest in former activities. When he would think about going to work his heart would race. Dr. Eyman diagnosed claimant as having an adjustment reaction disorder with depression and anxiety. When asked about a causal connection between the work injury and the diagnosis, Dr. Eyman answered "if he would not have burnt his hand, I don't think he would have been having the psychological symptoms that he was at the time."

With treatment and medication claimant was becoming less depressed and less anxious but his symptoms increased after he was terminated. Dr. Eyman last saw claimant November 20, 1996. Based upon both the third edition, revised, and the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment, Dr. Eyman opined claimant was moderately impaired which he rated at somewhere between 40 to 50 percent. He did not, however, see claimant through to maximum medical improvement. He does not know why claimant stopped coming to see him. Dr. Eyman was aware that claimant had received

psychological counseling previously after losing his job in Hawaii but he did not have those records. Also, during the time he was treating claimant, claimant was having problems with his girlfriend and that situation would also cause stress or anxiety. Claimant's relationship with his girlfriend ended before claimant was terminated.

Claimant was referred by the Administrative Law Judge to Dr. Harold M. Voth, a medical doctor with specialization in psychiatry and psychoanalysis. He saw claimant on November 5, 1997. He diagnosed claimant with neurotic depression by history but at the time of his examination said claimant did not look depressed. He speculated that the antidepressant medications may have been handling claimant's psychological problems. He could not say whether the antidepressants were a permanent cure, however. Dr. Voth saw a cause and effect relationship between the burn injury and the depression observing "I think if he hadn't been burned, he'd probably be working happily at Perkins." But agreed this assumed that management treated him fairly. Claimant believed he had been treated badly because of his termination. Using the Fourth Edition of the AMA Guides, Dr. Voth would place claimant in the mild to moderate impairment range. Dr. Voth said if he had to pick a number, claimant's impairment was in the range of 40 to 50 percent. Also, when Dr. Voth was asked about claimant's job tasks, he identified certain tasks that depressed persons should and should not perform, but at the same time Dr. Voth opined that claimant was able to go back to work even though claimant experiences some anxiety when he contemplates returning to cooking or even some other form of work. Finally, Dr. Voth's report, which is Exhibit 1 to his deposition, relates claimant's depression more to his termination than to his burn injury.

Claimant was examined by Dr. Mitchel A. Woltersdorf on May 4, 1998 at the request of respondent. He diagnosed claimant with a low grade depression that predated the accident and which was not aggravated by the burn injury. He described claimant as a symptom focuser that blows things out of proportion. In this context claimant perceives his firing as the source of his problems. The burn injury is not the issue with claimant, according to Dr. Woltersdorf.

CONCLUSIONS OF LAW

Traumatic neurosis is covered under the Workers Compensation Act if it results from a covered physical injury and meets the other requirements of the Act. (Syl. ¶ 1)

Traumatic neurosis caused by an emotional, nonphysical trauma on the job is not covered in Kansas by the Workers Compensation Act. (Syl. ¶ 2)

Under the Workers Compensation Act, traumatic neurosis is to be treated like any other health problem. If a subsequent covered industrial accident aggravates, accelerates, or intensifies the disease or affliction, the worker is

not to be denied compensation just because it is a preexisting condition. (Syl. ¶ 3)¹

Based upon the record presented, the Appeals Board finds claimant has failed to prove a direct causal connection between the burn injury and the diagnosis of depression. Claimant was admittedly stressed and depressed before the accident. And as far as aggravating factors, all three experts place more emphasis on the claimant's termination than they do on the burn injury. In addition, the testimony concerning a 40 to 50 percent permanent impairment is not credible. Claimant was not at maximum medical improvement when last seen by Dr. Eyman. And although Dr. Voth gives a similar rating opinion, this is contradicted by his other testimony. Dr. Voth prefaced his remarks with the statement that claimant "was on an antidepressant and I could not detect at the time depressive symptoms, but I pointed out that he was on an antidepressant which certainly could have relieved those symptoms or mask them, one of the two or both." (Voth Deposition at 6.) The Appeals Board concludes it is inconsistent to rate claimant at a 40 to 50 percent whole person impairment when his symptoms are not detectable to a trained observer and the claimant is capable of performing most, if not all of his former job tasks. The only exception would be the ability to supervise employees and from the record it is highly questionable whether claimant possessed this ability before the burn injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery dated November 5, 1998 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
James C. Wright, Topeka, KS

¹ Boutwell v. Domino's Pizza, 25 Kan. App. 2d 110, 959 P.2d 469 (1998), *rev. denied* ____ Kan. ____ (1998).

Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director